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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,225	02/03/2006	Tobias Helbig	DE030265	4180
24737 7590 04/13/2010 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER				
LAI, DANIEL				
ART UNIT		PAPER NUMBER		
2617				
MAIL DATE		DELIVERY MODE		
04/13/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/567,225

**Applicant(s)**

HELBIG, TOBIAS

**Examiner**

DANIEL LAI

**Art Unit**

2617

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-7 and 9-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,6,7,9 and 11 is/are rejected.
- 7) ☒ Claim(s) 4,5,10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

**Response to Amendment**

***Response to Arguments***

Applicant's arguments filed 15 January 2010 have been fully considered but they are not persuasive. In response to the argument that Busch does not disclose "wherein the first access point is adapted to determine whether there is a first free channel and a second free channel; and wherein, in case there are first and second free channels, the first access point is adapted to control a setting of the first and second communication channels on the basis of the first and second free channels", Examiner respectfully disagrees. Busch discloses detecting for a plurality of possible channels (paragraph 18), where a regCSIQ parameter is calculated for the possible channels based on channel sharing and interference, and the regCSIQ parameter is used to determine for channel swapping), and swap channels if such "possible channels" would increase performance (paragraphs 67-78, Fig. 5). In other words, channels capable of being shared and with low interferences (free channels) will be swapped between access points. Therefore, Busch discloses ""wherein the first access point is adapted to determine whether there is a first free channel and a second free channel; and wherein, in case there are first and second free channels, the first access point is adapted to control a setting of the first and second communication channels on the basis of the first and second free channels". Furthermore, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Applicant is suggested to avoid using languages such as "adapted to" (see MPEP 2606).

In response to the argument that "Jaszewski lacks any ability to determine whether a channel is free and that the access points lack any ability to control setting of the communication channel for itself or for any other access point, whether or not conditioned on the existence of a free channel", Examiner respectfully disagrees because Jaszewski discloses generating a new set of channel assignments for access points (col. 3, line 59-col. 4, line 25), which requires free channels to be determined to reduce interference. Jaszewski discloses assigning new set of channels to access points based on a conflict table to reduce interference (col. 6, line 48-col. 7, line 35). Therefore, Jaszewski discloses the argued features. Also note that claim 11 does not claim the control of setting is to be performed by an access point. The preamble only recites "Method of operating an access point...".

As a result, the argued features read upon the cited references.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 6, 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Busch et al. (US 2002/0176437 A1, hereinafter Busch).

Regarding claims 1 and 7, Busch discloses a wireless network system (Abstract, where Busch discusses a wireless LAN), comprising: a first access point for providing a first communication channel to a first terminal and a second access point for providing a second

communication channel to a second terminal (paragraph 54, top portion, where Busch discusses AP1 and AP2 communicate with network stations on channels C1 and C2); wherein the first access point is adapted to build up a third communication channel to the second access point to coordinate a setting of the first and second communication channels (paragraphs 72-76, where Busch discusses AP1 swapping channels with AP2); wherein the first access point is adapted to perform a detection for the second access point (paragraph 72, where Busch discusses probe request and probe response from other APs); wherein the first access point is adapted to establish the third communication channel to the second access point when the second access point is detected via at least one of a core network and a wireless channel (paragraphs 72-76, where Busch discusses AP1 swapping channels with AP2); wherein the first access point is adapted to determine whether there is a first free channel and a second free channel (paragraphs 75-78, where Busch discusses AP1 determines if swapping channels would increase performance); and wherein, in case there are first and second free channels, the first access point is adapted to control a setting of the first and second communication channels on the basis of the first and second free channels (paragraph 78, where Busch discusses AP1 swapping channels with AP2).

Regarding claims 3, 6 and 9, Busch further discloses the first and second communication channels are wireless channels (paragraph 54, where Busch discusses wireless LAN), and wherein the first and second communication channels correspond to first and second frequencies in the ISM band (paragraphs 4 and 54).

Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Jaszewski et al. (US 5,933,420, hereinafter Jaszewski).

Regarding Claim 11, Jaszewski discloses a method of operating an access point of a wireless network (Abstract), the method comprising the steps of providing a first communication channel to a terminal (col. 3, lines 33-45); building up a second communication channel to another access point to coordinate a setting of the communication channel (col. 4, lines 41-63, where Jaszewski discusses access points communicate with each other, col. 5, lines 5-25, where Jaszewski discusses channel coordination); performing a detection for the other access point (col. 4, lines 41-65); establishing a second communication channel to the other access point when the other access point is detected via at least one of a core network and a wireless channel (col. 4, lines 58-65, where Jaszewski discusses a communication path is established when a second access point is detected); determining whether there is a first free channel (col. 3, line 59- col. 4, line 25, where Jaszewski discusses determining whether access points are using same channel); controlling a setting of the first communication channel on the basis of the first free channel in case there is a first free channel (col. 4, lines 11-40, where Jaszewski discusses generating a new set of channel assignments to reduce near conflict); determining a first interference and channel usage map in case there is no first free channel and requesting a second interference and channel usage map from the other access point in case there is no first free channel (col. 5, lines 13-25, where Jaszewski discusses collecting signal strengths information, col. 6, lines 46-63). Jaszewski discloses determining an optimized channel lay-out on the basis of the first and second interference and channel usage maps and controlling the setting of the first communication channel on the basis of the optimized lay-out (col. 6, line 48-col. 7, line 35).

***Allowable Subject Matter***

Claims 4, 5 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LAI whose telephone number is (571)270-1208. The examiner can normally be reached on Monday-Thursday 9:00 AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lester Kincaid can be reached on (571)272-7922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. L./  
Examiner, Art Unit 2617

/LESTER KINCAID/  
Supervisory Patent Examiner, Art Unit 2617